

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALICE HERNANDEZ and U.S. POSTAL SERVICE,
GENERAL POST OFFICE, Staten Island, N.Y.

*Docket No. 96-293; Submitted on the Record;
Issued March 18, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has established that she sustained a recurrence of disability causally related to her September 24, 1987 employment injury.

The Board has given careful consideration to the issue involved, the contentions of appellant on appeal, and the entire case record. The Board finds that the decision of the hearing representative of the Office of Workers' Compensation Programs dated and finalized on January 30, 1995 is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the Office hearing representative.

Subsequent to the hearing representative's decision, appellant requested reconsideration and submitted a report from Dr. Jung H. Hahn, a treating physician, in support of her request. In her letter, appellant stated that she was required to perform work assignments outside the physical limitations of her limited-duty assignment.

In a report dated May 1, 1995, Dr. Hahn noted that appellant was working a limited-duty job on December 16, 1991. At the time of the recurrence on December 16, 1991, Dr. Hahn noted:

"Although this assignment was referred to as a 'limited duty' assignment, it still involved movements that were contrary to the patient's physical limitations. At the time of her recurrence of injury, [appellant] had spent several hours in a seated position with intermittent standing and reaching into a carriage bin to retrieve mail she was working on. In this particular instance, upon completing a phone conversation, [appellant] attempted to stand and turn to reach into the carriage bin to retrieve mail that was in a tray at the bottom of the carriage bin. These movements caused the patient to suffer from severe pain which she described as 'a pulling stabbing pain in the lower back.' Due to the weakness in

her lower extremities, it was necessary for her immediate supervisor to drive her home.”

As to the recurrence on May 26, 1992, Dr. Hahn noted:

“The patient suffered a similar episode of severe pain. On this occasion [appellant] had been standing for several hours sorting magazines which were in a carriage bin. In an attempt to reach the last few magazines in the bottom of the bin, the patient again felt a pull in her lower back. In an effort to continue with her work, she then reports walking over to a fellow employee to ask a question. At this time she bent down to remove a plastic bucket that was in her path and it was then that she describes: ‘not being able to straighten up because of agonizing pain in her lower back.’”

In conclusion, Dr. Hahn opined that appellant’s two episodes of recurrence of disability was due to her original injury, due to appellant’s “history of muscle weakness in the lower extremities along with positive MRI [magnetic resonance imaging] findings.” Dr. Hahn also opined that appellant was unable to perform her duties as a mail carrier.

In a decision dated July 21, 1995, the Office reviewed the case on its merits and denied modification of the January 30, 1995 decision.

The Board finds that appellant has not established that she sustained recurrences of disability on December 16, 1991 and May 26, 1992 causally related to her September 24, 1987 injury. The Office also found that appellant’s evidence did not establish a change in the requirements of her light-duty position.

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he or she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he or she cannot perform such light duty. As part of this burden, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.¹

In this case, appellant has not shown a change in the nature and extent of her limited-duty job requirements, nor has she submitted sufficient medical evidence to show a change in the nature and extent of her injury-related condition. Although appellant has submitted medical evidence, indicating that she had severe pain and weakness in her lower extremities, she has not submitted reasoned medical evidence establishing that her condition beginning on December 16, 1991 or on May 26, 1992 was causally related to her September 24, 1987 employment injury. Dr. Hahn stated that appellant’s two episodes of recurrence of disability were due to her original injury because of her history of muscle weakness. The report contains insufficient rationale or explanation on how appellant’s original employment injury caused or contributed to appellant’s

¹ *Gus N. Rodes*, 46 ECAB 518 (1995); *Lillian M. Jones*, 34 ECAB 379 (1982).

recurrences of disability. Dr. Hahn also fails to cite any medical findings on physical examination that supported his conclusion that appellant's recurrence of disability was due to her original injury because of appellant's history of muscle weakness. Furthermore, Dr. Hahn stated that appellant could not perform her regular duties, but was capable of performing light-duty work. His report thus has little probative weight. Appellant has not submitted sufficient probative, rationalized medical evidence that establishes that the September 24, 1987 employment injury caused any disability commencing December 16, 1991 or May 26, 1992.

As appellant has not submitted rationalized medical evidence explaining how and why the condition on and after December 16, 1991 and May 26, 1992 was causally related to her September 24, 1987 work injury and because she has not shown a change in the nature and extent of her light-duty requirements, appellant has not met her burden of proof in establishing her claims for recurrence of disability.²

The decisions of the Office of Workers' Compensation Programs dated July 21 and January 30, 1995 are hereby affirmed.

Dated, Washington, D.C.
March 18, 1998

George E. Rivers
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

² See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).